Arab-Malaysian Merchant Bank Bhd v Silver Concept Sdn Bhd

HIGH COURT (KUALA LUMPUR) — NO D4–22A–145 OF 2003
ROHANA YUSUF J
14 OCTOBER 2009

Banking — Banks and banking business — Islamic banking — Islamic financing facility based on al-Bai Bithaman Ajil principle — Whether al-Wujuh facility contrary to Shariah principles — Whether statement of account not certificate of indebtedness and thus not binding on defendant — Whether defendant ought to succeed on its counterclaim

The defendant entered into a sale and purchase agreement ('the SPA') with Ng Eng Hiam Plantations Sdn Bhd (the vendor) to acquire a piece of land and assets in the District of Ulu Selangor, which the defendant intended to develop into a mixed development. The defendant applied to the plaintiff bank to arrange for a RM125m syndicated al-Bai Bithaman Ajil facility to part finance the purchase of the land; a RM60m syndicated revolving *al-Wujuh* facility for working capital for the development project; and an up to RM200m syndicated end-financing facility to provide financing to prospective purchasers of units on the land. The plaintiff bank was at all material times the agent who arranged for the facilities by bringing together the various financial institutions ('the consortium') to provide the financing to the defendant. When the defendant defaulted in its repayments to the consortium the plaintiff bank, as the agent, sued the defendant and succeeded. The appeal against that decision was pending in the Court of Appeal. In the meantime, the plaintiff has now claimed against the defendant on the revolving *al-Wujuh* facility comprising of an al-Bai Bithaman Ajil facility ('the BBA facility') by which the defendant sold the land to the consortium for RM60m and the consortium sold the same back to the defendant at RM96,225,000 payable on an instalment basis, and a revolving drawing rights on a marginal deposit account ('the MDA') maintained by the plaintiff, as agent of the consortium. The money in the MDA was to be disbursed to the defendant in two tranches in accordance with the terms and conditions of the facility agreement. The first tranche was disbursed and upon default the facilities were terminated. The plaintiff as the agent of the consortium is now seeking a judgment for the sum of RM6,439,102.59, being the sum due and owing under the revolving *al-Wujuh* facility and indemnities against all liabilities and losses suffered as a result of the defendant's default. The defendant counterclaimed for damages for losses suffered by it when the plaintiff bank had breached its fiduciary duties under

the facility agreement by not fully disbursing the facility and also sought a declaration that the facility agreement was illegal, null and void due to Shariah inconsistencies. Since the facts were not in dispute the parties agreed to submit on issues without any evidence being adduced. The defendant submitted that the revolving *al-Wujuh* facility was contrary to Shariah principles in that it was a term loan facility of RM60m with an overdraft facility (revolving drawing rights) on the said loan amount. The defendant further alleged that there was an element of *riba* in the purported facility granted to the defendant and that since *riba* was prohibited by Islam it contravened the provisions of the Islamic Banking Act 1983, and was unlawful and void. The plaintiff submitted that the fact that the defendant had issued a debenture and created a charge did not make the transaction a loan transaction, and that at all times the defendant knew that the entire exercise was to implement the granting of a facility in such a way as to bring the transactions within the limits of Shariah law. The plaintiff further submitted that the profit element in this case was based upon Islamic banking practices and could not be considered as interest. The issues for determination were whether the facility agreement was in fact a loan agreement with fixed interest of 8.625%pa and thus unenforceable under Shariah law; whether the statement of account produced by the plaintiff to substantiate the amount due and outstanding was not a certificate of indebtedness issued pursuant to the terms of the facility agreement and was therefore not binding on the defendant and whether the defendant ought to succeed on its counterclaim.

Held, allowing the plaintiff's claim with costs and dismissing the defendant's counterclaim with costs:

(1) The *al-Wujuh* revolving financing facility, which was structured to accommodate the defendant's request for such capital, was made on the basis of a fluctuating facility on a short to medium term method of financing via the principle of al-Bai Bithaman Ajil or deferred payment sale. In the present case the purchase price was RM60m while the sale price was pre-determined at RM96,225,000 with nothing in the facility agreement stipulating the interest rate as alleged by the defendant. Thus it was wrong for the defendant to say it was interest when all parties agreed that it would be profit. Since a BBA agreement is a valid and enforceable contract, the *al-Wujuh* revolving financing facility which is based on the BBA is also valid and enforceable (see paras 11–13).

(2) The plaintiff had produced sufficient evidence of the amount due to them and there was no manifest error established by the defendant to dispute the certificate (see para 16).

(3) When the defendant defaulted in the instalment due to the consortium, the latter demanded the payment of all monies due and payable under

the *al-Wujuh* revolving financing facility. As the plaintiff was acting pursuant to the provisions of the facility agreement, under which the defendant was bound, the issues raised by the defendant in its counterclaim were baseless (see paras 17–18).

[Bahasa Malaysia summary

Defendan menandatangani satu perjanjian jual beli ('PJB') dengan Ng Eng Hiam Plantations Sdn Bhd ('penjual') untuk memperoleh sebidang tanah dan aset di Daerah Ulu Selangor, yang mana defendan berniat untuk memajukannya sebagai pembangunan bercampur. Defendan memohon kepada plaintif untuk menguruskan RM125 juta kemudahan al-Bai Bithaman Ajil bersindiket untuk membiayai sebahagian daripada pembelian tanah tersebut; RM60 juta kemudahan pusingan *al-Wujuh* sebagai modal penjalanan untuk projek pembangunan tersebut; dan sehingga RM200 juta kemudahan pembiayaan akhir bersindiket (syndicated end-financing facility) untuk memberikan kewangan untuk bakal pembeli unit-unit di atas tanah tersebut. Plaintif, pada kesemua masa material adalah ejen yang menguruskan kemudahan-kemudahan tersebut dengan membawa bersama berbagai institusi-institusi kewangan ('konsortium') untuk menyediakan kemudahan kewangan kepada defendan. Apabila defendan gagal membayar pembayaran balik kepada konsortium plaintif, sebagai ejen, menyaman defendan dan berjaya. Rayuan terhadap keputusan tersebut belum didengar di Mahkamah Rayuan. Pada masa yang sama, plaintif kini memohon terhadap defendan atas kemudahan pusingan *al-Wujuh* terdiri daripada kemudahan al-Bai Bithaman Ajil ('kemudahan BBA') yang melaluinya defendan menjual tanah tersebut kepada konsortium pada harga RM60 juta dan konsortium menjualnya semula kepada defendan pada harga RM96,225,000 dibayar secara ansuran, dan hak pengeluaran pusingan atas akaun deposit marginal ('ADM') yang dikendalikan oleh plaintif, sebagai agen konsortium. Wang di dalam ADM akan dibayar kepada defendan dalam dua bahagian menurut terma-terma dan syarat-syarat perjanjian kemudahan tersebut. Bahagian pertama dibayar dan atas kegagalan kemudahan tersebut dibatalkan. Plaintif sebagai ejen konsortium kini memohon penghakiman untuk jumlah RM6,439,102.59, sebagai jumlah yang perlu dibayar dan terhutang di bawah kemudahan pusingan *al-Wujuh* dan ganti rugi terhadap kesemua liabiliti dan kerugian yang dialami disebabkan oleh keingkaran defendan. Defendan menuntut balas untuk ganti rugi atas kerugian yang dialaminya apabila plaintif memungkiri kewajipan fidusiarinya di bawah perjanjian kemudahan tersebut kerana gagal membayar keseluruhan kemudahan dan juga memohon deklarasi bahawa perjanjian kemudahan tersebut adalah salah di sisi undang-undang, tidak sah dan batal disebabkan oleh ketidakseragaman Syariah. Oleh sebab fakta tidak dipertikaikan, pihak-pihak bersetuju untuk menghujah atas isu-isu tanpa apa-apa keterangan dikemukakan. Defendan menghujah bahawa kemudahan pusingan *al-Wujuh* adalah bertentangan dengan prinsip Syariah bahawa ia adalah kemudahan pinjaman berjangka

A sebanyak RM60 juta dengan kemudahan overdraf (hak pengeluaran pusingan) atas jumlah pinjaman tersebut. Defendan selanjutnya mendakwa bahawa terdapat elemen riba di dalam kemudahan yang diberikan oleh defendan dan kerana riba dilarang dalam Islam, ia bertentangan dengan peruntukan Akta Perbankan Islam 1983, dan adalah menyalahi B undang-undang dan batal. Plaintif menghujah fakta bahawa defendan telah mengeluarkan debentur dan mewujudkan gadaian tidak menjadikan transaksi tersebut transaksi pinjaman, dan bahawa pada kesemua masa defendan mengetahui bahawa keseluruhan pelaksanaan adalah untuk melaksanakan pemberian kemudahan dalam suatu cara di mana transaksi C tersebut terangkum dalam had undang-undang Syariah. Plaintif selanjutnya menghujah bahawa elemen keuntungan di dalam kes ini adalah berdasarkan kepada amalan perbankan Islam dan tidak boleh dianggap sebagai faedah. Isu-isu yang perlu diputuskan adalah sama ada perjanjian kemudahan tersebut sebenarnya perjanjian pinjaman dengan faedah tetap sebanyak D 8.625% setahun dan oleh itu boleh dilaksanakan di bawah undang-undang Syariah; sama ada penyata akaun yang dikemukakan oleh plaintif untuk menyokong jumlah yang perlu dibayar dan terhutang bukan perakuan hutang yang dikeluarkan menurut terma-terma perjanjian kemudahan dan oleh itu tidak mengikat defendan dan sama ada defendan perlu berjaya dalam E tuntutan balasnya.

Diputuskan, membenarkan tuntutan plaintif dengan kos dan menolak tuntutan balas defendan dengan kos:

F (1) Kemudahan kewangan pusingan *al-Wujuh*, yang dibina untuk memudahkan permohonan defendan untuk modal tersebut, dibuat atas dasar kemudahan berubah-ubah untuk kewangan jangka masa pendek hingga sederhana melalui prinsip al-Bai Bithaman Ajil atau penjualan bayaran tertangguh. Di dalam kes ini harga belian adalah RM60 juta G sementara harga jualan diputuskan sebelumnya pada RM96,225,000 tanpa apa-apa di dalam perjanjian kemudahan yang menyatakan kadar faedah seperti yang dinyatakan oleh defendan. Oleh itu adalah salah untuk defendan menyatakan bahawa ia adalah faedah apabila semua pihak bersetuju bahawa ia adalah keuntungan. Oleh sebab perjanjian H BBA adalah kontrak yang sah dan boleh dilaksanakan, kemudahan kewangan pusingan *al-Wujuh* yang berasaskan kepada BBA adalah juga sah dan boleh dilaksanakan (lihat perenggan 11–13).

(2) Plaintif telah mengemukakan keterangan yang mencukupi berkenaan I jumlah yang perlu dibayar kepada mereka dan tidak ada kesilapan yang jelas dibuktikan oleh defendan untuk mempertikaikan sijil tersebut (lihat perenggan 16).

(3) Apabila defendan mengingkari pembayaran ansuran kepada konsortium, konsortium menuntut pembayaran kesemua wang yang

tertunggak dan perlu dibayar di bawah kemudahan kewangan pusingan *al-Wujuh*. Oleh sebab plaintif bertindak menurut peruntukan-peruntukan perjanjian kemudahan, yang mengikat defendan, isu-isu yang dibangkitkan oleh defendan di dalam tuntutan balasnya tidak berasas (lihat perenggan 17–18).]

Notes

For cases on Islamic banking, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1952–1954.

Cases referred to

Arab Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors (Koperasi Seri Kota Bukit Cheraka Bhd, third party) [2008] 5 MLJ 631; [2009] 1 CLJ 419, HC (refd)

Arab-Malaysian Merchant Bank Bhd v Silver Concept Sdn Bhd [2008] 6 MLJ 295; [2008] 9 CLJ 522, HC (refd)

Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals [2009] 6 MLJ 839; [2009] 6 CLJ 22, CA (folld)

Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor [2006] 2 MLJ 685; [2006] 3 CLJ 544, FC (refd)

Legislation referred to

Islamic Banking Act 1983

Fadzilah Mohd Pilus (Rozali Ismail & Co) for the plaintiff.
VK Lingam (VK Lingam & Co) for the defendant.

Rohana Yusuf J:

BACKGROUND FACTS

[1] The brief facts of the case are as follows. The defendant entered into a sale and purchase agreement with Ng Eng Hiam Plantations Sdn Bhd in respect of some land in the District of Ulu Selangor, Selangor and other assets on it, known as Rasa Estate ('the land'). The defendant was desirous to develop the land into a mixed development comprising residential units, commercial units, industrial units, schools, a university campus, a hospital and an old folks village ('the project').

[2] On the defendant's application, Arab-Malaysian Merchant Bank Bhd ('AMMB') vide letter of offer dated 22 September 1995 offered to arrange the following facilities:

(a) RM125m syndicated al-Bai Bithaman Ajil facility (syndicated al-Bai Bithaman Ajil facility) to part finance the purchase of the land;

(b) RM60m syndicated revolving *al-Wujuh* facility (syndicated revolving *al-Wujuh* facility) for working capital of the project; and

(c) Up to RM200m syndicated end-financing facility (syndicated end-financing facility) to provide financing to prospective purchasers of residential units and shophouses.

SYNDICATED AL-BAI BITHAMAN AJIL FACILITY (BBA)

[3] AMMB is an arranger and agent of the Consortium of the Financial Institutions comprising Perwira Affin Bank Bhd, Bank Islam Malaysia Bhd, Mayban Finance Bhd and Kewangan Industri Bhd for a BBA facility. The total financing was RM216,875,000. The defendant defaulted. AMMB sued the defendant and succeeded at the High Court as reported in *Arab-Malaysian Merchant Bank Bhd v Silver Concept Sdn Bhd* [2008] 6 MLJ 295; [2008] 9 CLJ 522. The case is now pending appeal at the Court of Appeal.

SYNDICATED REVOLVING *AL-WUJUH* FACILITY

[4] The present claim of the plaintiff is on the revolving *al-Wujuh* facility. In order to develop the said land, the defendant requested a Consortium of Financial Institutions, comprising Arab-Malaysian Merchant Bank Bhd and Arab-Malaysian Finance Bhd ('consortium') for financing in part of the cost of development of the land. AMMB is an arranger and agent. The consortium agreed to provide a revolving *al-Wujuh* facility comprising:

(a) an al-Bai Bithaman Ajil facility which the defendant sells the land to the consortium at RM60,000,000. The consortium then sells back at RM96,225,000 payable on installment basis;

(b) revolving drawing rights on an account maintained by the AMMB as agent of the consortium (the marginal deposit account);

vide a facility agreement for a revolving *al-Wujuh* facility dated 29 March 1996 ('facility agreement').

[5] Based on BBA principle under the facility agreement, the consortium purchased the land from the defendant for a purchase price of RM60,000,000 and immediately sell back to the consortium at the sale price of RM96,225,000 payable on a deferred payment term. The payment term is in accordance with cl 4.9(a) of the facility agreement and as tabulated in the table. AMMB was to credit into a notional account maintained by the plaintiff to be referred to as the marginal deposit account ('MDA'). The said money in MDA shall be disbursed in two tranches respectively in accordance with the terms and conditions of the facility agreement, as well as the

defendant's requirements/requests from time to time. In the event of any default in payment, the consortium shall by written notice to the defendant declare the unpaid sale price and all drawings to be immediately due and repayable. The first tranche was disbursed and upon default the facilities was terminated.

THE PLAINTIFF'S CLAIMS

[6] Now, AMMB as the agent for the consortium is seeking a judgment to be entered against the defendant for the sum of RM6,439,102.59 being the amount due and owing under the revolving *al-Wujuh* facility as at 24 June 2009 and indemnity against all liabilities and losses suffered by AMMB and/or the vendors as a result of the default of the defendant in the payment of all amounts due under the revolving *al-Wujuh* facility agreement.

[7] The fact of default is not disputed by the defendant. Since the facts are not disputed the parties agreed to submit on issues without any evidence been adduced. The defendant attempted to challenge the validity of the facility agreement on issue of Shariah. First they contend that the facility agreement is in fact a loan agreement with fixed interest rate of 8.625%pa and this is not allowable in Shariah. Apart from that issue, the defendant also questioned the validity of the statement of account produced by AMMB to substantiate the amount due and outstanding. They contend that the said statement is not a certificate of indebtedness issued pursuant to the provision of the facility agreement, hence is not binding on the defendant.

[8] In their counterclaim, the defendant alleged firstly that AMMB had breached their fiduciary duties and terms of the facility agreement when they did not fully disbursed the facility. As such had caused hardship to the defendant to continue with the project and had caused them to suffer loss and damages. Secondly, they seek a declaration from the court that the facility agreement is illegal, null and void and accordingly unenforceable due to Shariah inconsistency.

THE VALIDITY OF THE REVOLVING *AL-WUJUH* FACILITY

[9] On this issue, firstly, Dato' VK Lingam counsel for the defendant argued that the revolving *al-Wujuh* facility is contrary to the principle of Islam because it is not a genuine sale as they purport to be. It is according to him in fact a term loan facility of RM60,000,000 with an overdraft facility (revolving drawing rights) on the said loan amount. He argued further that if it was a sale, there should not be a third party charge created over the land and a debenture created in favour of AMMB. He also contended that it is not a sale because no payment was made to landowner Ng Eng Hiam Plantations

Sdn Bhd in consideration of the purported sale and purchase of the land. All these facts show that the transaction was not meant for a sale but a loan transaction. Secondly, Dato' VK Lingam submitted that there is an element of *riba*' in the purported facility granted to the defendant. Upon his own computation he contended that the sale price of RM96,225,000 is in fact made up of the loan amount of RM60,000,000 and interest at the rate of 8.625%pa for the duration of the facility agreement which is seven years. In fact, the interest imposed came up to RM36,225,000 which is termed as the profit. Since *riba*' is prohibited by the religion of Islam, it contravenes the provisions of the Islamic Banking Act 1983 and was therefore unlawful and void.

[10] Learned counsel for AMMB Puan Fadzilah Pilus argued that the fact that the defendant has issued a debenture and created a charge does not ipso facto make the transaction a loan transaction. She contends that the transaction between the parties were made with full knowledge of the defendant who knew that the entire exercise was to implement the granting of a facility in such a way as to bring the transactions within the limits of Shariah. She further submitted that the profit element in this case is based upon Islamic banking principles. It is a marked up amount of profit which is to be paid to the party providing the financing and is allowed by Shariah and cannot be construed as interest.

[11] The parties here have agreed before executing the agreement, without any undue pressure or persuasion, to the preconditions of the Islamic based contracts. Parties also agreed to be bound by the terms to conclude the agreement. The defendant also agreed that the whole purpose of the sale transaction is to provide the banking facility it required, for the capital of the purposed project. For that reason, a sale agreement was concluded between the plaintiff. This is to ensure that the defendant becomes the beneficial owner of the land for the purpose of the revolving *al-Wujuh* facility. The facility was structured in such a way to accommodate the defendant's request for such capital.

Al-Wujuh revolving financing facility is made on the basis of a fluctuating facility on a short to medium terms (in this case it was seven years) method of financing via the principle of Bai Bithaman Ajil or deferred payment sale. In this case, the purchase price was at RM60,000,000 while the sale price is predetermined at RM96,225,000. Nothing in the agreement stipulates the interest rate as alleged by the defendant. It is wrong for the defendant to say it is interest when they both agreed them to be profit.

[12] The issue of validity of Bai Bithaman Ajil was earlier brought to court in the *Arab Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors*

(Koperasi Seri Kota Bukit Cheraka Bhd, third party) [2008] 5 MLJ 631; [2009] 1 CLJ 419 where the learned judge in that case ruled that the Bai Bithaman Ajil agreement is not a sale transaction but a lending agreement. The Appeal Court had however in *Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals* [2009] 6 MLJ 839; [2009] 6 CLJ 22 (CA) overruled the decision and held that the Bai Bithaman Ajil agreement is valid and an enforceable contract. I am bound by that decision to hold that the *al-Wujuh* revolving financing based on BBA is valid and enforceable. In that same case Raus Sharif JCA (now FCJ) said that:

> ... Thus, if the contract is not vitiated by any vitiating factor recognised in law such as fraud, coercion, undue influence, etc, the court has a duty to defend, protect and uphold the sanctity of the contract entered between the parties.

Thus it is the duty of this court to enforce the terms that have been agreed by parties. Based on the above, I find no reason to declare the facility agreement to be void and unenforceable.

QUANTUM CLAIMED

[13] The second issue raised by the defendant is on quantum of the AMMB's claim. They questioned the validity of the statements of account produced by AMMB to substantiate their claim. In raising this defence Dato' VK Lingam contended that AMMB only disbursed a sum of RM13,398,547.20 instead of RM60,000,000, as the facility was cancelled on 10 March 1998 that is about two years after the date of the agreement. Despite that the amount claimed by the bank is based on the total selling price ie RM96,225,000. They also argued that, there are four different contradictory sums submitted by AMMB ie RM47,920,726.52 as in the writ of summon and statement of claim, RM44,990,610.86 as in the statement of account as at 9 May 2005, RM11,193,983.44 as in the statement of account as at 14 September 2006 (p 1 of the supplemental common bundle of documents) and RM6,439,102.59 as at 24 June 2009 (p 1 of the latest common bundle of documents). These show inconclusiveness of the statements of account against the defendant and should not be accepted. Apart from that AMMB was said to have failed to produce a certificate as required under cl 20.4 of the agreement. Hence the amount claimed is still unproven. Lastly, they also argued that the defendant is entitled to a rebate on the facility amount as the same was terminated before the expiry of it's tenor.

[14] On this issue, Puan Fadzillah had confirmed that the facility amount has not been fully released. She also confirmed that there are four different outstanding sum submitted as alleged by the defendant. However, they are only relying on the latest statement of account as at p 1 of the latest common

bundle of documents to substantiate their claim after taking into consideration, inter alia, the unreleased amount (which is deducted in term of rebate at RM33,818,755.56) and the payments made by the defendant. In such situation, I do not find any prejudice to the defendant if latest statement is used. Although it was submitted by the learned Dato' VK Lingam that all the additional fees (legal fees, valuation fees, auction fees and quit rent) are only applicable in foreclosure proceedings which was decided and disposed of, the fact that cl 17.2 of the facility gives AMMB a right to claim for would render the contention by the defendant flawed and erroneous.

[15] Based on the above, I am satisfied that the plaintiff has produced sufficient evidence to substantiate the amount due to them. The fact that the statement of account was duly certified by the manager, credit administration and the executive, credit administration at the bottom of the latest statement of account has refuted the defendant's allegation that there was no certificate under cl 20.4 of the facility agreement. They are therefore contractually bound by it. The legal position of the certificate of indebtedness is well settled in the Federal Court case of *Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor* [2006] 2 MLJ 685; [2006] 3 CLJ 544 and needs no further deliberation. There is no manifest error established by the defendant to dispute the certificate.

THE DEFENDANT'S COUNTERCLAIM AND CLAIM IN INDEMNITY BY THE PLAINTIFF

[16] The defendant counterclaimed for breach of the facility agreement when they had unilaterally and unlawfully cancelled and terminated the drawdown of the full facility prematurely before the end of the duration of the facility. As a consequence, the defendant was unable to develop the land and had suffered losses and damages. AMMB, as agent for the consortium demanded from the defendant vide a letter dated 26 February 1998 the payment of the instalment which was due on 16 January 1998 in default of which the defendant was informed, inter alia, that the payment of the unpaid sale price would be accelerated pursuant to the default provisions in the facility agreement. However the defendant failed and/or neglected to pay the instalment which was due on 16 January 1998. AMMB, upon the instructions of the consortium vide a letter dated 10 March 1998 declared the unpaid sale price and all drawings to be immediately due and payable and cancelled both the purchase and the drawing rights on the marginal deposit account and further demanded the payment of all amounts due and payable under the revolving *al-Wujuh* facility. The defendant however still failed and/or neglected to pay the outstanding sum.

[17] All of the above were done by AMMB pursuant to the provisions of the facility agreement particularly cl 10 which the defendant is bound by it. Hence the issue raised by the defendant is baseless. For this reason the counterclaim of the defendant is dismissed.

CONCLUSION

[18] In view of the foregoing, I hereby allow the plaintiff's claim of RM6,439,102.59 as in the latest statement of account with costs and hereby dismiss the defendant's counterclaim with costs.

Plaintiff's claim allowed with costs and the defendant's counterclaim dismissed with costs.

Reported by Kohila Nesan